constitutional nature of the assessment proceedings, seems to exceed the ordinary limits of equity jurisdiction and the bill should not have been sustained.

INSURANCE — LOCATION OF RISK — SUBROGATION — ASSIGNMENT. — The complaint alleged that the plaintiff was the insurer of certain goods "while contained" in a designated warehouse, that the defendant railroad company negligently set fire to the goods while on a platform adjacent to its tracks, and that the plaintiff paid the loss taking a formal assignment of the owner's cause of action against the railroad. The court below sustained the defendant's demurrer. *Held,* the plaintiff's application for a writ of *certiorari* in the intermediate court was properly denied. *Hartford Insurance Co.* v. *Payne* (Ga. 1922) 112 S. E. 736.

A right of subrogation exists on the payment of a loss by the insurer to the insured. *Allen-Wright Furniture Co.* v. *Hines* (1921) 34 Idaho 90, 200 Pac. 889. The right exists if the payment was made by the insurance company on a reasonable belief, or to avoid a doubtful controversy, though actually it was not liable. *Railway Co.* v. *Fire Ass'n* (1895) 60 Ark. 325, 30 S. W. 350; *Maryland Casualty Co.* v. *Cherryvale Gas Co.* (1917) 99 Kan. 563, 162 Pac. 313; *Sun Mut. Ins. Co.* v. *Mississippi Transportation Co.* (C. C. 1883) 17 Fed. 919; see *King* v. *Victoria Ins. Co.* [1896] A. C. 250, 255. Where a policy insures goods while contained in a designated building it does not generally cover losses occurring while the goods are elsewhere. *Green* v. *Liverpool, etc. Fire Ins. Co.* (1894) 91 Iowa 615, 60 N. W. 189; *Liebenstein* v. *Aetna Ins. Co.* (1867) 45 Ill. 303. In the instant case, however, the facts might have been such that the insured in an action against the insurer could reasonably have urged that "in the warehouse" included the platform. *Cf. Webb* v. *National Ins. Co.* (N. Y. 1849) 2 Sandf. 497. In a few states there are statutes to the effect that where railroad companies are liable for damages caused by sparks from their engines, they are entitled to the benefit of any insurance on the destroyed property. In such states, of course, the insurers cannot be subrogated to the insured's rights. *Farren* v. *Maine Central R. R.* (1914) 112 Me. 81, 90 Atl. 497. No such statute having appeared in the instant case, it would seem that the insurance company should have recovered by right of subrogation. Moreover, the plaintiff was the assignee of the insured's cause of action. A tort action for damage to property is assignable in almost all jurisdictions. *Metropolitan Ins. Co.* v. *Day* (1920) 119 Me. 380, 111 Atl. 429; *Stapp* v. *Madera Canal Co.* (1917) 34 Cal. App. 41, 166 Pac. 823; see *Sayre* v. *Detroit R. R.* (1919) 205 Mich. 294, 314, 171 N. W. 502; *contra, Turk* v. *Illinois Cent. R. R.* (D. C. 1912) 193 Fed. 252. The plaintiff in the instant case had a good cause of action, both by assignment and by subrogation.

JUDGMENTS—LIENS—ASSIGNMENTS.—Edwards held a judgment against the defendant corporation which was a lien upon its land. The corporation was indebted to the defendant Myers. By agreement of the parties the corporation paid Edwards the amount of his judgment and Edwards assigned the judgment to Myers as security for his debt. Myers later advanced money to the corporation in further reliance upon the judgment assigned to him. Subsequently the corporation conveyed the land to the plaintiff, who had constructive notice of the Edwards' judgment but not of its assignment, for a cash consideration. The plaintiff brought this action to cancel the judgment lien. *Held,* bill dismissed *Lachner* v. *Myers* (Wash. 1922) 208 Pac. 1095.

Equity will not permit a judgment debtor, by paying the amount of the judgment and taking an assignment of it to himself or to a third person, to get contribution from his joint tortfeasor; *Lillie* v. *Dennert* (C. C. A. 1916) 232 Fed. 104; nor from his co-debtor from whom he is not entitled to contribution;

Snyder v. *Malone* (1905) 124 Wis. 114, 102 N. W. 354; nor to prejudice the rights of other lien creditors. *First Nat. Bk.* v. *Gibson* (1900) 60 Neb. 767, 84 N. W. 259; *Fowler* v. *Wood* (1888) 31 S. C. 398, 10 S. E. 93; but *cf. Howk* v. *Kimball* (1830) 2 Blackf. 309. However, where the judgment was assigned pursuant to an agreement whereby the assignee lent his credit to the debtor to enable him to pay the judgment, it is enforceable in favor of the assignee. *Harbeck* v. *Vanderbilt* (1859) 20 N. Y. 395; *Patterson* v. *Clark* (1894) 96 Ga. 494, 23 S. E. 496. It is generally assumed that this would be so if the assignee had supplied the money under a similar agreement. See *Henry & Coatsworth Co.* v. *Halter* (1899) 58 Neb. 685, 696; *Patterson* v. *Clark, supra,* 496. Effect has been given in a common law court to an agreement between the parties that the judgment be kept alive after payment as security for later advances, where the rights of lien creditors were not involved. *Pierce* v. *Black* (1884) 105 Pa. St. 342. And where the judgment creditor, for a consideration from the judgment debtor, assigned the judgment to another creditor as security for his existing debt, the purchaser at the foreclosure of a junior judgment lien on land of the same debtor was refused an injunction against execution by the assignee. *Howk* v. *Kimball, supra.* In the instant case, as well as in *Howk* v. *Kimball, supra* it should be noted that the decisions can only be sustained on the assumption that the assignment was valid at law, since no new consideration was paid by the assignee. It is questionable whether a common law court would so regard the intention of the parties as to avoid the usual effect of payment.

JUDGMENTS—RES JUDICATA—DEMURRER TO FORMAL AND SUBSTANTIAL DEFECTS IN COMPLAINT.—In an action to quiet the title to realty, the defendants pleaded *res judicata.* The defendants had demurred to the complaint in the former suit upon several grounds, *viz.,* the court's lack of jurisdiction of parties and subject matter, defects in parties plaintiff and defendant, misjoinder of causes of action, and failure to state a cause of action. Judgment on demurrer was rendered for the defendants, though it did not appear upon what ground the court had based its decision. *Held,* for the plaintiff. The appellate court felt bound to regard the former decision as a technical one, inconclusive on the merits, and consequently not available as *res judicata. Hutchings* v. *Zumbrunn* (Okla. 1922) 208 Pac. 224.

A judgment on demurrer involving the merits of the controversy will bar a subsequent proceeding upon the same facts. *Foss* v. *People's Gaslight & Coke Co.* (1920) 293 Ill. 94, 127 N. E. 347. But where the former judgment on demurrer rested upon a formal defect, as in pleading, the adjudication is not available as a bar. *Cohen & Sons* v. *Lurie Woolen Co.* (1921) 232 N. Y. 112, 133 N. E. 370. If the original judgment was rendered on demurrer because the complaint was defective in omitting certain material facts whose inclusion would have established liability, by the weight of authority the plaintiff can supply the necessary allegations and enforce the same right anew. *Barrentine* v. *Henry Wrape Co.* (1914) 113 Ark. 196, 167 S. W. 1115; *Laenger* v. *Laenger* (1916) 138 La. 53, 70 So. 501; *contra, Hoffman* v. *Summerford* (Ga. 1922) 111 S. E. 68. Where several grounds for demurrer had been urged, some formal and some substantial, and the decision left it uncertain upon which one the judgment was based, it will be presumed in most jurisdictions that the court sustained the demurrer for formal defects without investigating the merits. *Kleinschmidt* v. *Binzel* (1894) 14 Mont. 31, 35 Pac. 460; see *Bissell* v. *Township of Spring Valley* (1887) 124 U. S. 225, 232, 8 Sup. Ct. 499; *contra, People* v. *Stephens* (N. Y. 1876) 51 How. Pr. 235. This rule is reasonable and consonant with the modern tendency to eliminate technical victories. Any contrary holding would be postu-